

WATER-RELATED LEGISLATION OF THE 1997-1998 TERM OF THE GEORGIA GENERAL ASSEMBLY

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Abstract. A number of significant water-related bills were considered by the General Assembly during the 1997-1998 legislative term. Major bills included ones relating to apportioning water between Georgia and its neighboring states, privatization of wastewater facilities, extending the area covered by the Metropolitan River Protection Act, and inclusion of Georgia in the federal Coastal Zone Management program. In addition, a legislative study committee (with a technical advisory committee) was created to make recommendations on funding research on salt water intrusion in the Upper Floridan Aquifer. One of the more controversial bills during the term would have eliminated vegetative buffer requirements along trout streams. Although this legislation did not pass, the issue has not been resolved. A legislative advisory committee has been appointed to see how the buffer issue may be addressed. In addition, the next term of the General Assembly will focus on regional alternatives to deal with urban sprawl/air quality issue but will likely include consideration of regional water management options as well.

INTRODUCTION

The 1997-1998 term of the Georgia General Assembly dealt with a number of major water-related bills and resolutions. In fact, in both the 1997 and 1998 sessions, water-related legislation was among the most significant considered, including both water specific bills and other legislation that affects water resources (i.e., growth management and land use, air quality, solid and hazardous waste management).

WATER LAW

Major water legislation considered during the 1997-1998 term included both water quality and water allocation bills.

The Water Wars

The phrase "water wars" refers to conflict over water use in two river basins: the Alabama-Coosa-Tallapoosa (ACT) in the States of Alabama and Georgia and the Apalachicola-Chattahoochee-Flint (ACF) in Alabama, Georgia, and Florida. Although the comprehensive study being conducted by the Corps of Engineers and the three states was not completed, the participants agreed in late 1996 that it was time to move forward with legislation to create interstate compacts designed to apportion water in the basins among the states. Two interstate compacts were drafted, one for each river basin. These compacts were enacted by each of the state legislatures in identical form in 1997, ratified by Congress, and signed by the President. The compact for the ACT basin is between Alabama and Georgia (HB 148). The compact for the ACF is between Alabama, Florida and Georgia (HB 149). The two compacts are identical except for the states and river basins involve.

The compacts differed from other interstate water compacts in that they did not identify the amount of water that must cross the state lines. Instead, the compacts direct the participants to develop formulae to be adopted by December 1998. Negotiations on the formulae have been underway but no agreement had been reached by the 1998 deadline. The three states and the federal representative did agree to continue the negotiations for one year. Consequently, by December 1999, the formulae are to be adopted unless another extension is agreed to, something that Georgia has indicated it will not do.

Without question, entering into river basin compacts with our neighboring states has major implications for Georgia. It will directly determine how the waters in the ACF and ACT systems are apportioned among the states. In addition, it will likely determine how we work with neighboring states with other shared water resources, such as the Savannah River that we share with South Carolina.

Upper Floridan Aquifer Study

Concern over industrial and municipal ground water use along Georgia's coast is not new. In fact, it was this concern that resulted in the passage of the Ground Water Use Act of 1972 which established a permitting requirement for those users withdrawing in excess of 100,000 gallons of ground water per day. Although this program has been in place for a quarter of a century, South Carolina and Georgia are examining their programs to see what additional steps are necessary to prevent salt water intrusions. South Carolina is concerned that heavy withdrawals in the Savannah area are contributing to the salt water intrusion in the Upper Floridan Aquifer near Hilton Head Island. In addition to the Hilton Head salt water intrusion, Brunswick has experienced salt water from a deeper zone moving up into the previous fresh water zone and contaminating wells.

In order to address the ground water concerns in the coastal area, the Environmental Protection Division (EPD), in April 1997, released its "Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan Aquifer of Southeast Georgia." The interim strategy establishes guidelines for ground water actions in the 24 coastal county area of Georgia through December 31, 2005. Major components of the strategy include: water supply planning requirements for the coastal counties; modification of existing municipal and industrial ground water withdrawal permit limits to better reflect actual reported usage; pumping limits within Chatham and Glynn counties and portions of Bryan and Effingham counties; promotion of water conservation measures and the use of alternative water supplies; the use of sound science in conducting technical studies of the aquifer system; and stakeholder input.

During the interim period that this strategy is in force, a multi-year research effort is being undertaken to provide better information on the nature of the salt water intrusion problems along the coast and alternatives for addressing them. Four pulp and paper companies in the 24 county area affected by the problem (i.e., Georgia Pacific in Brunswick; Gilman Paper Company in St. Marys; ITT Rayonier in Jesup; and Union Camp in Savannah) have committed to financing the research project at a level of \$500,000 per year through its duration for a total of \$4 million. The recommendations of the Upper Floridan Aquifer Legislative Study Committee is that the state generate the remaining funds necessary to see the research project through completion. Governor Miller included \$2 million in his FY 1999 budget for the study but this was reduced to \$1 million during the 1998 session. For the study to be

completed in a timely manner, funding will be needed annually to complete the entire research project.

The implications of how this problem is addressed affect a broader area than the geographic region affected by the salt water intrusion. If the state's water allocation mechanisms are refined to address this problem, then the president is set for how water will be allocated in other parts of the state. Consequently, the potential impact of this issue is as significant in Georgia as the resolution of the "water wars."¹

Provision of Water and Wastewater Services

The provision of water and wastewater services, both by public providers and private contractors, was an issue area debated by the legislature during the 1997-1998 term.

Privatizing Large Wastewater Systems

Concerns raised over Atlanta's wastewater system spurred action during the 1997-1998 legislative term to place additional requirements on large wastewater systems that have a poor compliance track record. HB 1163, which was part of Governor Zell Miller's 1998 legislative package, requires that within 12 months of notification by the director of EPD of specified violations, the owner of a large wastewater treatment facility must enter into a binding contract with a private contractor for operation and maintenance of the facility and sewer collection system.

Privately-owned Public Water Systems

Small privately-owned public water systems have been problematic in that the owners of some have not appropriately operated and maintained them, resulting in inadequate supply and/or poor water quality. When such a situation occurs and the system owner does not correct the problem, those served by the system usually turn to the local government for help. SB 252, passed during the 1998 session, provides EPD with additional authority to assure compliance by new privately-owned public water systems. The law requires the owner to retain a professional engineer to prepare plans and specifications for the system, submit a multiyear financial plan to EPD, provide an approved back-up water source, and submit to EPD a copy of a trust indenture or other legal agreement with the local government that assures the operation and maintenance of the public water system in compliance with drinking water regulations.

In a related matter, several bills were introduced, but not enacted, to address concerns raised by the permit

applications submitted to EPD by The Savannah Group (TSG) for surface water withdrawal from the Savannah, Ogeechee and Altamaha rivers. The company intends to withdraw and treat surface water and to sell it to municipal and industrial customers. They also are considering submitting an application for aquifer storage and recovery, a technique used elsewhere but not in Georgia.² Concern has been voiced by residents of the coastal area that by issuing the permits, EPD would be creating an unregulated monopoly with the potential result of price gouging.³ The bills introduced would generally have placed restrictions on EPD's ability to issue the permits.

Local Governments Service Delivery Strategy

The intent of HB 489, enacted in 1997, is to provide a flexible framework within which local governments in each county can develop a service delivery system that is both efficient and responsive to citizens in their county. It requires that the county call a meeting of all municipalities within its borders to set up a negotiation process dealing with service delivery, including the provision of water and wastewater services.⁴ The negotiation process should result in minimizing inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity, and land use. The strategy agreements are to be executed by July 1, 1999.

Stream Buffer Requirements

During the 1998 legislative session, the Metropolitan River Protection Act was amended (SB 661) to extend the area along the Chattahoochee River covered by the law from Peachtree Creek to the southern extent of Fulton County. The amendments set forth requirements for developing and updating land use plans for a 2000 foot corridor along the river and restricting certain types of land uses within the buffer.

Until the 1997 session of the General Assembly, streams classified as trout streams were identified in the Georgia Code and, consequently, required an act of the legislature to change their designation. During the 1997 session, HB 1087 was enacted which provided the Board of Natural Resources with the authority to designate trout streams. The Board subsequently delisted 224 miles of trout streams (out of 4,320 miles of trout streams in the state) that did not support reproducing trout populations (primary trout streams) or year-round trout populations (secondary trout streams).⁵

Georgia law requires that a 100 foot vegetative buffer be

maintained along trout streams. Variances to the buffer requirement can be granted by EPD. Because issuance of variances had become the norm, the requirements had become less effective in protecting trout waters. Consequently, EPD released draft rules in early 1998 strengthening the buffer variance procedures. The draft rules resulted in a number of complaints and in legislation being introduced that would severely weaken the trout stream buffer requirement. HB 1593 passed the House but died in the Senate. Since the issue was not resolved, the legislature appointed an advisory committee to make recommendations on how the issue might be resolved. The committee had not completed its efforts at the time of this writing.

WATER-RELATED BILLS

In addition to the bills and resolutions directly related to water resources, there were a number of bills that indirectly affect water resources. These include bills relating to growth management and land use, air quality, and solid and hazardous waste management.

Growth Management and Land Use

During the 1997-1998 term major pieces of growth management/land use legislation were considered. These included bills dealing with coastal zone management, transfer of development rights, regulation of confined animal feeding operations, and creating a trust fund designated for the acquisition of natural and recreation areas and historic sites.

Coastal Zone Management

The federal Coastal Zone Management Act of 1972, as amended, established a national coastal zone management (CZM) program, designed to create a voluntary federal-state-local partnership, to plan and manage the nation's coastal resources. Georgia participated in the planning phase of the CZM program in the early 1970s, but withdrew in the late 1970s due to concerns over oversight of local land use measures, the location of state infrastructure, and for other reasons.

In 1992, Georgia received federal funds to again study possible participation in the CZM program. An advisory committee worked with DNR for four years to develop the state plan for Georgia. In developing the plan it was determined that the substantive issues that had prevented Georgia's earlier participation in the program had already been addressed by legislative action but that authorizing

legislation would be needed for Georgia to join the federal program. The legislation (HB 167) was enacted during the 1997 session of the General Assembly. Participation in the program is expected to help address growth-related water issues along the coast.

Transfer of Development Rights

Transfer of development rights from one parcel of land to another is a growth management technique that has been employed in other states but has not been widely used in Georgia. The approach allows the development levels to be shifted among parcels so that the overall density remains the same but some parcels are built to higher densities while others remain in their natural condition. This approach can be used to shift development away from sensitive areas, such as stream corridors, and to concentrate it in areas more suitable for development. Legislation authorizing the transfer of development rights (HB 1540) passed in 1997.

Confined Animal Feeding Operations

In response to changes in the General Agreement on Trade and Tariffs (GATT) and the North American Free Trade Agreement (NAFTA) owners of animal feeding operations, principally hog operations, have been expanding their facilities and moving into states that have not historically had these types of large, concentrated animal facilities. State and local governments across the country, as well as USEPA and USDA, have been attempting to address concerns with the operations, principally related to nutrient management, water pollution and nuisance odors. Although a bill was considered in 1998 (HB 1265) that would place stringent requirements on these facilities, it was not enacted. Instead, HB 1432 was passed which provides the director of EPD with the authority to deny permits to "bad actors" or those with a poor compliance track record. This approach was borrowed from the solid waste law that provides the director with similar authority. In addition, although a Senate Study Committee was created to study the issue, it appears that changes in EPD rules relating to animal feeding operations will result in no further legislative action on this issue.

Land, Water and Wildlife Heritage Trust Fund

During Zell Millers two terms as governor, considerable land has been acquired and maintained in its natural condition under his Preservation 2000 Program and his RiverCare 2000 Program. To continue these initiatives, Governor Miller included legislation in his 1998 package,

to create the Land, Water and Wildlife Heritage Trust Fund. Three bills with bipartisan support (SB 496, SR 532, and HB 1551) would establish the trust fund using an increase of \$1.00 per \$1,000.00 value on the sale of real estate (i.e., real estate transfer fee). The legislation passed the General Assembly in 1998 but required support of the voters of Georgia in the November 1998 election on a constitutional amendment to dedicate funds for this purpose. Amendment #1, however, was not passed by the voters and, as a result, the trust fund was not established.

Air Quality

Air quality became a major focus of concern near the end of the 1997-1998 term when it became apparent that the nonattainment status of the Atlanta metropolitan area would result in the loss of federal highway funds. Addressing this issue, along with the urban sprawl that contributes significantly to it, will be a major focus of the 1999-2000 term of the legislature. The only major air quality bill enacted during the 1997-1998 term was HB 1707 which amended the Code Section dealing with inspection and maintenance requirements for automobiles in the metropolitan Atlanta area. The amendments provide the Board of Natural Resources and the director of EPD additional powers relating to the enforcement of the requirements.

Solid and Hazardous Waste Management

For the past decade, solid waste has been a major issue before the General Assembly. The 1997-1998 term, however, saw relatively little action in this issue area. HB 162, passed in 1997, requires a public hearing before a county, city, local authority, or special district contracts for the sale, lease, or management of a landfill or solid waste disposal facility. The House also passed a resolution (HR 874) encouraging EPD in cooperation with the Pollution Prevention Assistance Division of DNR to conduct research to identify economically viable recycling uses for scrap tires. That study has been completed.⁶

In an effort to encourage redevelopment of "brownfields," the Georgia Hazardous Site Reuse and Redevelopment Act (SB 486) was passed during the 1998 legislative session. The Georgia Hazardous Site Response Act (HB 510), enacted in 1997, provides up to a 25 percent waiver of certain fees to encourage industries in the state to reduce their generation of wastes. Also passed during the 1997 session was HB 470 which provides for a lien on real property on which EPD has performed remedial action relating to oil or hazardous material spills or releases.

CONCLUSIONS

The 1997-1998 Term of the Georgia General Assembly witnessed action on a number of major water-related bills and resolutions. Although some of the bills did not, in themselves, resolve the issues, they did establish processes that would lead to their resolution. These bills created the river basin compacts with Alabama and Florida to apportion water from the Appalachian-Chattahoochee-Flint River Basin and the Alabama-Coosa-Tallapoosa River Basin and the initiation of a multiyear study of the Upper Floridan Aquifer to better understand the salt water intrusion problem and how it may be addressed. In addition, significant water-related bills enacted during the term include ones that authorize Georgia to participate in the federal Coastal Zone Management program, extend the area protected by the Metropolitan Rivers Protection Act, and establish requirements for privatizing large wastewater system under certain circumstances.

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